

Dwayne Henry
924442

8301 State Road
Phila, Pa 19136

10/3/20

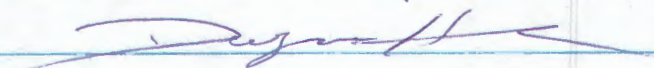
Clerk of the Court
U.S. District Court
601 Marketst
Phila Pa 19106-1797

RE: Filing of A Civil Complaint (42 U.S.C. 1983)

To The Clerk of Court:

Please find enclosed 3 copies of a civil complaint (1983) with attach summons to 2 complaints (for the named defendants). I have also enclosed a copy of the complaint for the court's records. Also enclosed is a "application to proceed in Forma Pauperis" and a "DECLARATION in support of Application to proceed in Forma Pauperis" with attached exhibits. I am requesting that the clerk of this District Court file the attached civil complaint and summons and if there's any question or concerns please feel free to contact me at the above address.

Thank you



cc: Retained

Case 2:20-cv-05115-EGS Document 2 Filed 10/13/20 Page 2 of 14
UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

DWAYNE HENRY, PRO SE
Plaintiff

CASE NO.

-V-

RICHARD ROSATI

JOHN DOE #1

JOHN DOE #2

JOHN DOE #3

NATHANEIL SMITH JR.

Defendants

COMPLAINT WITH JURY DEMAND

Introduction

This is a Civil Rights action filed by Dwayne Henry, for Damages and Injunctive Relief under 42 U.S.C. § 1983, alleging excessive use of force in violation of the Eight & Fourth Amendment of the United States Constitution and wrongfully & intentionally destroying evidence depriving Plaintiff of the means to challenge the unlawful conduct in court in violation of the Right to Access to Court. The Plaintiff also alleges the torts of assault and battery and negligence.

Jurisdiction

The Court has Jurisdiction over Plaintiff's claims of violation of Federal Constitutional Rights under 42 U.S.C. §§ 1331(1) and 1343.

The Court has Supplemental Jurisdiction over the Plaintiff's State Law tort claims under 28 U.S.C. § 1367.

Parties

- 1.) The Plaintiff, DWAYNE HENRY, is incarcerated at Philadelphia Industrial Correctional Center (PICC) 8301 State Road
Phila Pa 19136

However Plaintiff was not a Prisoner during the events described in this complaint.

- 2.) Defendant RICHARD ROSATI is a Philadelphia Police officer employed at the 26th District. He is sued in his official and individual capacity.
- 3.) Defendant John Doe^{#1} is a Philadelphia Police officer employed at the 26th District. He is sued in his official and individual capacity.
- 4.) Defendant John Doe^{#2} is a Philadelphia Police officer and is in charge of the supervision and discipline of all Police officers employed at the 26th District. He is sued in his official and individual capacity.
- 5.) Defendant John Doe^{#3} is a Philadelphia Police officer employed at the 26th District. He is sued in his official and individual capacity.

Defendant NATHANIEL Smith is a Philadelphia Detective employed at the EAST Detective Division. He is sued in his official and individual capacity.

FACTS

- 6.) On the date of 10/6/19 as the Plaintiff was being transported to Temple Episcopal Hospital in the back of a Police Van (Patty-wagon) handcuffed & shackled by defendant ROSATI & John Doe #1 who both were wearing Bodycameras. Defendant ROSATI stated to Plaintiff "IF YOU TRY TO RUN ONCE WE GET TO THE HOSPITAL I AM GONNA BEAT YOUR LITTLE BLACK ASS".
- 7.) Shortly afterwards when they arrived at the Hospital Def ROSATI and Def John Doe #1 escorted Plaintiff to the Emergency Room waiting area. And Plaintiff was directed to have a seat in a chair. As Plaintiff waited, Plaintiff ask Def ROSATI to use the bathroom numerous times in which he was ignored.
- 8.) After waiting several minutes (Plaintiff holding his bowels) A nurse approached and ask Plaintiff what was wrong with him? Plaintiff explained to the nurse that he was assaulted on the streets by several officers and both of his kneecaps were busted open.
- 9.) The nurse told Plaintiff that he would need to get a X-Ray and to follow her. As Plaintiff stood up and followed the nurse with both defendants on both sides of Plaintiff. Plaintiff seen a bathroom right next to the X-Ray room and Plaintiff again ask could he use the bathroom. Def ROSATI said "No".
- 10.) The nurse, Plaintiff and Def John Doe #1 enter the X-Ray room while Def ROSATI closed the door and stood outside the X-Ray room. Plaintiff was directed to sit on the X-Ray table. Plaintiff again ask Def John Doe #1 could he use the bathroom and that it was an emergency! Def John Doe #1 told Plaintiff that as soon as the X-Ray was over he could use the bathroom.

- 11.) Plaintiff was then directed by the nurse to lay back on the X-Ray table then the nurse and def John Doe walked over to a computer monitor in a side room. Plaintiff then went through the motions of the X-Ray machine and as soon as the X-Ray machine shut off Plaintiff jumped up and head straight to the bathroom.
- 12.) As Plaintiff reach the door to the X-Ray room and open the door there stood def ROSATI and as Plaintiff attempted to walk pass him to the Restroom def ROSATI swung a close fist striking Plaintiff in his right eye causing Plaintiff to stumble. def ROSATI then lean over and pick Plaintiff up off his feet and slammed Plaintiff on a bucket of dirty mop water, causing the dirty mop water to spill all over Plaintiff.
- 13.) As Plaintiff struggle to his feet still shackled and hand cuffed. Then appeared def John Doe with a stungun in his hand and place it to Plaintiff neck. Due to the dirty mop water covering Plaintiff and the stungun Plaintiff body began to violently shake and Plaintiff loss control of his bowels and defecate on himself.
- 14.) def John Doe then removed the taser/stungun then place it to Plaintiff back as Plaintiff begun to crawl def ROSATI start kicking Plaintiff in his face and head after several kick def ROSATI grab hold of Plaintiff face and started viciously slamming Plaintiff head into the ground. Plaintiff then lost consciousness.

- 15.) Once Plaintiff awoken He was cover in Blood and handcuff to a Bed with A NURSE at Plaintiff Bedside who informed Plaintiff that He was about to get staples (sutures) in his head Because His head was split open. The NURSE Also informed Plaintiff that He Also needed His EYEBROW (RIGHT) Glued Shut Because He had a Deep Laceration there.
- 16.) Plaintiff Also Received numerous Lacerations to his Lips and an abrasion to his neck and Back where the stungun was Placed. Plaintiff Front tooth was Also Broken. AS Plaintiff was getting the staples (sutures) Placed in his head Plaintiff informed one of the Police officer (John Doe 2) who was watching over Plaintiff that He's going to File A Lawsuit And that the whole incident is on bodycam. The officer (John Doe 2) Stated in Response "You'll never get the footage" in a Joking manner.
- 17.) Following this incident Plaintiff was CRIMINALLY charged with aggravated assault, Simple Assault, REAP. Based on the above-described events. On or about August 6, 2020 Plaintiff Lawyer "MONTAYA" informed Plaintiff that he Filed a subpoena for the Bodycam Footage from def's ROSATI and John Doe 1. However on or about August 14, 2020 Plaintiff's Lawyer informed Plaintiff there is no Bodycam Footage of the incident.
- 18.) Defendant John Doe #3 has been placed on notice of the abusive conduct of defendant's ROSATI & John Doe #1 by A number of complaints and grievances over many months but has failed to take disciplinary action against them or otherwise control there behavior. Defendant NATHANIEL SMITH JR was the Leading investigating officer and who interviewed and investigated the above-events. This officer was in charge of reviewing all Bodycam Footage of the incident But Due to a cover-up of misconduct He allow the Bodycam footage to be intentionally and maliciously destroyed.

Claims For Relief

- 19.) The actions of defendant's ROSATI and John Doe #1 in using Physical Force against the Plaintiff without need or Provocation and failing to intervene to prevent the misuse of Force were done maliciously and sadistically. Constituted CRUEL and UNUSUAL Punishment in violation of the 8th & 4th Amendment.
- 20.) The actions of defendant's ROSATI & John Doe #1 in using EXCESSIVE Force against the Plaintiff was objectively UNREASONABLE Constituting the tort of assault and Battery under the Law of PENNSYLVANIA.
- 21.) The verbal threat by defendant's RICHARD ROSATI accompanied by the UNREASONABLE use of EXCESSIVE Force against Plaintiff was in violation of the 4th Amendment.
- 22.) The actions of defendant's ROSATI, Smith, and John Doe 1-2 IN CONSPIRING to wrongfully and intentionally destroy evidence (Body cam footage) in a cover-up of misconduct depriving Plaintiff of the means to challenge the unlawful conduct in court violates the Right of Court access
- 23.) The Failure of defendant John Doe #3 to take disciplinary or other actions to curb the know Pattern of Physical Abuse by defendant's ROSATI & Doe 1-2 constituted deliberate indifference to Plaintiff and others safety, and contributed to and PROXIMATELY caused the above-described violation of the 8th Amendment Rights and assault and battery.

Relief Requested

WHEREFORE, Plaintiff Request that the Court Grant the Following Relief:

A. Issue a declaratory Judgment stating that:

1. The Physical abuse of The Plaintiff by defendant's ROSATI & John Doe #1, Violated the Plaintiff's Rights under the 8th Amendment to the U.S. Constituted an assault and battery under state Law.
2. Defendant John Doe #2 Failure to take action to curb the physical abuse violates the Plaintiff Rights.
3. Defendants ROSATI and John Doe #1 and John Doe #3 and Smith actions in destruction of the Bodycam Footage deprives Plaintiff of the means to challenge the unlawful conduct violates the Right of Court access.

B. Issue an injunction ordering defendants, NATHANIEL SMITH, ROSATI and DOE 1 or their agents to:

1. Immediately arrange for the Plaintiff to view and copy all Bodycamara Footage on 10/6/20.

C. Award Compensatory damages in the following amounts:

1. 1,000,000 jointly and severally against def's ROSATI, John Doe #1 for the physical and emotional injuries sustained as a result of the Plaintiff's beatings
2. 100,000 jointly and severally against def's ROSATI, Smith, John Doe 1, John Doe 2 and 3 for the intentionally and negligently spoliation of evidence (Bodycam Footage)

D. Award Punitive damages in the following amounts:

1,000,000 each against def's ROSATI and DOE 1, 2, 3, Smith

E. Grant such other Relief as it may appear that Plaintiff is entitled.

10-3-20

Respectfully submitted,

Dwayne Henry #924442

8301 State Road

Phila Pa 19136

I declare under the Penalty of Perjury that the foregoing is True and Correct.

UNITED STATES DISTRICT COURT FOR THE EASTERN
DISTRICT OF PENNSYLVANIA

Dwayne Henry, Prose
Plaintiff

v.

Civil Action No.

RICHARD ROSATI
NATHANEIL SMITH JR
JOHN DOE 1
JOHN DOE 2
JOHN DOE 3

SUMMONS

TO THE ABOVE-NAMED DEFENDANTS:

You are hereby summoned and required to serve upon Plaintiff,
whose address is 8301 State Road Phila, Pa 19136
an answer to the complaint which is herewith served upon
you, within 20 days after service of this summons upon
you, exclusive of the day service, or 60 days if the
U.S. Government or officer/agent thereof is a defendant.
If you fail to do so, Judgment by default will be taken
against you for the relief demanded in the Complaint.

Clerk of the Court

Date: _____

UNITED STATES DISTRICT COURT FOR THE EASTERN
DISTRICT OF PENNSYLVANIA

Dwayne Henry, Prose
Plaintiff

v.

Civil Action No.

RICHARD ROSATI
NATHANEIL SMITH JR
JOHN DOE 1
JOHN DOE 2
JOHN DOE 3

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you, exclusive of the day service, or 60 days if the
U.S. Government or officer/agent thereof is a defendant.

If you fail to do so, judgment by default will be taken
against you for the relief demanded in the complaint.

Clerk of the Court

Date: _____

EX A

REQUEST TO STAFF

All inmates fill in this section and deposit in Social Service box

NAME (last) (first) <div style="font-size: 1.2em; font-family: cursive;">HENRY DWAYNE</div>	DATE <div style="font-size: 1.2em; font-family: cursive;">9.11.20</div>
NUMBER (PID #) <div style="font-size: 1.2em; font-family: cursive;">92442</div>	LIVING QUARTERS <div style="font-size: 1.2em; font-family: cursive;">HB2 33</div>
WORK ASSIGNMENT (if any) AND HOURS	ADMISSION DATE

do not write in
this space

Check the help or information you need:

☐ What is my next court date(s)?

☐ I want to apply for (circle one):

a job

a program

school

☐ I want to meet with my Social Worker to talk about I am requesting Certified copies of six-month of my account which is needed for the Clerk

☐ I want to see the Notary of the Vis District Court,

☐ EMERGENCY (check this box and circle one choice below only if the matter is a genuine emergency)

- a matter of life or death, or serious bodily injury to any person
- serious disruption in the facility
- serious health hazard to any person
- immediate action needed re: custody or welfare of my children
- I have been cleared legally for discharge. (No more cases are holding me.)

☐ Other matters, or more detail on above _____

Signature of Inmate

(do not write below this line)

Date request answered: by interview on housing area correspondence other

Answer to request of:

NAME	
NUMBER (PID #)	
HOUSING AREA	

Signature of Social Worker

REQUEST TO STAFF

All inmates fill in this section and deposit in Social Service box

NAME (last) <u>HENRY</u> (first) <u>DUANE</u>	DATE <u>10/11/20</u>
NUMBER (PID #) <u>924412</u>	LIVING QUARTERS <u>F2 15</u>
WORK ASSIGNMENT (if any) AND HOURS <u>1st</u>	ADMISSION DATE

do not write in this space

Check the help or information you need:

☐ What is my next court date(s)?

☐ I want to apply for (circle one):

a job

a program

school

☐ I want to meet with my Social Worker to talk about I AM REQUESTING A

COPY OF MY MONTHLY STATEMENT FROM

☐ I want to see the Notary APPLICATION TO PREPARE MY PROBATION

☐ EMERGENCY (check this box and circle one choice below only if the matter is a genuine emergency)

- a matter of life or death, or serious bodily injury to any person
- serious disruption in the facility
- serious health hazard to any person
- immediate action needed re: custody or welfare of my children
- I have been cleared legally for discharge. (No more cases are holding me.)

☐ Other matters, or more detail on above _____

Signature of Inmate

(do not write below this line)

Date request answered: _____ by interview _____ on housing area _____ correspondence _____ other _____

Answer to request of:

NAME	
NUMBER (PID #)	
HOUSING AREA	

Signature of Social Worker

Attachment 3.F.10.a

**PHILADELPHIA DEPARTMENT OF PRISONS
INMATE GRIEVANCE FORM**

☐ ASD☐ CFCF☐ DC☐ HOC☒ PICC☐ RCFNAME: DWAYNE HENRYPID: 924442Check box only if grievance is regarding Medical Services ☐

**Description of Grievance, Incident or Problem
(Include date and time of incident)**

the BASIS OF THIS GRIEVANCE IS THAT PRISON OFFICIAL
HERE AT PICC IS DENYING ME ACCESS TO COURT
IN VIOLATION OF MY 4th AMENDMENT. IN SUMMARY
FOR THE PASS SEVERAL WEEKS I HAVE BEEN
REQUESTING A OFFICIAL COPY OF THE PASS 6 MONTH
OF MY ACCOUNT BALANCE WHICH IS REQUIRED BY THE
"DISTRICT COURT OF PA" SO I CAN PROCEED
IN COURT IN FORMA PAUPERIS I HAVE BEEN
DENIED A COPY OF MY ACCOUNT BALANCE WHICH
IS HINDERING ME FROM THE COURTS

Action Requested by Inmate:

AS A RELIEF I SEEK A OFFICIAL COPY OF THE PASS 6 MONTH
OF MY ACCOUNT BALANCE OF \$15 million IN DAMAGES WHICH IS BEING

See: Continuation of Grievance – Page 2 YES ☐ NO ☐ See: 10/13/20

Describe how and when you tried to resolve this Grievance informally.

Date that you are depositing this Grievance in a grievance box: 9/28/20

Signature of Grievant: [Signature] Date: 10-13-20

Duane Henry
92442
8301 State Road
Phila, Pa 19136

U.S.M.S.
X-RAY

U.S. DISTRICT COURT
Eastern District of Pennsylvania
U.S. Courthouse
Clerk of The Court
601 Market St Rm 2609
Phila, Pa 19106-1797

